

SENATE BILL No. 411

By Committee on Assessment and Taxation

2-8

1 AN ACT concerning income taxation; relating to benefits received under
2 the promoting employment across Kansas act; amending K.S.A. 2011
3 Supp. 74-50,211, 74-50,212 and 74-50,213 and repealing the existing
4 sections.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2011 Supp. 74-50,211 is hereby amended to read as
8 follows: 74-50,211. As used in this act, unless the context otherwise
9 requires:

10 (a) "Act" means the provisions of K.S.A. 2011 Supp. 74-50,210
11 through 74-50,219, and amendments thereto.

12 (b) "County median wage" means the median wage paid to
13 employees located in the county where the qualified company intends to
14 employ new employees as reported by the department of labor in its
15 annual report for the previous year.

16 (c) "Department" means the department of commerce.

17 (d) "Expanding business" means the expansion of an existing
18 business facility, office, department or other operation located in the state
19 of Kansas and locating in Kansas the jobs directly related to such business
20 facility, office, department or other operation.

21 (e) "High-impact project" means a business development project for
22 which the qualified company shall meet the requirements of subsection (c)
23 of K.S.A. 2011 Supp. 74-50,212, and amendments thereto.

24 (f) "Metropolitan county" means the county of Douglas, Johnson,
25 Leavenworth, Sedgwick, Shawnee or Wyandotte.

26 (g) "NAICS" means the North American industry classification
27 system.

28 (h) "NAICS code industry average wage" means the average wage
29 paid to employees of companies classified in the same NAICS code as the
30 qualified company for the region in which the qualified company intends
31 to employ new employees as reported by the department of labor in its
32 annual report for the previous year.

33 (i) "New business" means a facility, plant, division, office,
34 department, production line, production shift or other business operations
35 of a company that was not doing business in Kansas prior to the
36 submission of an application for benefits under this act and that provides

1 documentation of such to the satisfaction of the secretary.

2 (j) "New employee" means a person newly employed by the qualified
3 company in the qualified company's business operating in Kansas during
4 the taxable year for which benefits are sought under K.S.A. 2011 Supp.
5 74-50,212, and amendments thereto. A person shall be deemed to be so
6 engaged if such person performs duties in Kansas in connection with the
7 operation of the Kansas business on: (1) A regular, full-time basis; or (2) a
8 part-time basis, provided such person is customarily performing such
9 duties at least 20 hours per week throughout the taxable year. Employees
10 performing functions directly related to a relocating, expanding, or new
11 business facility, office, department or other operation shall be considered
12 new employees *only if: (A) An existing employee who resides out of state
13 and physically relocates to Kansas; or (B) had no employment history with
14 the qualified company and was hired after the qualified company was
15 awarded benefits under this act.*

16 (k) "Non-metropolitan county" means any county that is not a
17 metropolitan county.

18 (l) (1) (A) "Qualified company" means any for-profit corporation,
19 partnership or other entity making available to its full-time employees
20 adequate health insurance coverage and paying at least 50% of the
21 premium for such health insurance, which meets the requirements of
22 K.S.A. 2011 Supp. 74-50,212, and amendments thereto, and submits an
23 application for benefits meeting requirements established by the secretary.

24 (B) "Qualified company" also includes any not-for-profit corporation
25 which locates within the state of Kansas a regional, national or
26 international headquarters and which meets the requirements of
27 subparagraph (A).

28 (2) "Qualified company" shall not include any corporation,
29 partnership or other entity: (A) Which is identified by any of the following
30 NAICS code groups, sectors or subsectors:

31 (i) Industry group 7132 or 8131;

32 (ii) sectors 44, 45, 61, 92 or 221 (including water and sewer services);

33 or

34 (iii) subsector 722;

35 (B) which is a bioscience company, as defined in K.S.A. 2011 Supp.
36 74-99b33, and amendments thereto;

37 (C) which is delinquent in the payment of any nonprotested taxes or
38 any other amounts due to the federal government, the state of Kansas or
39 any other political taxing subdivision; or

40 (D) which has filed for or has publicly announced its intention to file
41 for bankruptcy protection.

42 (3) Notwithstanding any provision of this subsection, except for
43 paragraphs (2)(B), (C) and (D), a company may be deemed a qualified

1 company if such company's headquarters or administrative offices located
2 in this state serve an international or multi-state territory and such
3 company meets the requirements of K.S.A. 2011 Supp. 74-50,212, and
4 amendments thereto.

5 ~~(m) "Retained job" means an existing job which will be lost without~~
6 ~~participation by the employer under the provisions of the promoting~~
7 ~~employment across Kansas act.~~

8 ~~(n)~~ "Secretary" means the secretary of the department of commerce.

9 Sec. 2. K.S.A. 2011 Supp. 74-50,212 is hereby amended to read as
10 follows: 74-50,212. (a) In order to qualify for benefits under this act a
11 qualified company shall:

12 (1) Relocate to Kansas an existing business facility, office,
13 department or other operation doing business outside the state of Kansas
14 and locate the jobs directly related to such relocated business facility,
15 office, department or other operation in Kansas;

16 (2) locate a new business facility, office, department or other
17 operation in Kansas and locate the jobs directly related to such business
18 facility, office, department or other operation in Kansas; or

19 (3) expand an existing business facility, office, department or other
20 operation located in the state of Kansas and locate the jobs directly related
21 to such business facility, office, department or other operation in Kansas,
22 except that no payroll withholding taxes shall be retained prior to January
23 1, 2012.

24 A qualified company may utilize or contract with a third-party
25 employer to perform services whereby the third-party employer serves as
26 the legal employer of the new employees providing services to the
27 qualified company and such services are performed in Kansas and the
28 third-party employer and the new employees are subject to the Kansas
29 withholding and declaration of estimated tax act.

30 (b) Any qualified company, approved by the secretary for benefits
31 pursuant to paragraph (a), that locates its business operation in a
32 metropolitan county and will hire at least 10 new employees within two
33 years from the date the qualified company enters into an agreement with
34 the secretary pursuant to K.S.A. 2011 Supp. 74-50,213, and amendments
35 thereto, or any qualified company, approved by the secretary for benefits
36 pursuant to paragraph (a), that locates its business operation in a non-
37 metropolitan county and will hire at least five new employees within two
38 years from the date the qualified company enters into an agreement with
39 the secretary pursuant to K.S.A. 2011 Supp. 74-50,213, and amendments
40 thereto, shall: (1) Be eligible to retain 95% of the qualified company's
41 Kansas payroll withholding taxes for such new employees being paid the
42 county median wage or higher for a period of up to:

43 (A) Five years if the median wage paid to the new employees is equal

1 to at least 100% of the county median wage;

2 (B) six years if the median wage paid to the new employees is equal
3 to at least 110% of the county median wage;

4 (C) seven years if the median wage paid to the new employees is
5 equal to at least 120% of the county median wage; or

6 (2) be eligible to retain 95% of the qualified company's Kansas
7 payroll withholding taxes for such new employees being paid the county
8 median wage or higher for a period of up to five years if the median wage
9 paid to the new employees is equal to at least 100% of the NAICS code
10 industry average wage.

11 (c) Any qualified company, approved by the secretary for benefits
12 pursuant to paragraph (a), that engages in a high-impact project whereby
13 the qualified company will hire at least 100 new employees within two
14 years from the date the qualified company enters into an agreement with
15 the secretary pursuant to K.S.A. 2011 Supp. 74-50,213, and amendments
16 thereto, shall be eligible to retain 95% of the qualified company's Kansas
17 payroll withholding taxes for such new employees being paid the county
18 median wage or higher for a period of up to:

19 (1) Seven years if the median wage paid to the new employees is
20 equal to at least 100% of the county median wage;

21 (2) eight years if the median wage paid to the new employees is equal
22 to at least 110% of the county median wage;

23 (3) nine years if the median wage paid to the new employees is equal
24 to at least 120% of the county median wage; or

25 (4) ten years if the median wage paid to the new employees is equal
26 to at least 140% of the county median wage.

27 (d) In the event that a qualified company contracts with a third party
28 as described in subsection (a), the third party shall remit payments equal to
29 the amount of Kansas payroll withholding taxes the qualified company is
30 eligible to retain under this section to the qualified company, and report
31 such amount to the department of revenue as required pursuant to
32 subsection (a) of K.S.A. 2011 Supp. 74-50,214, and amendments thereto.

33 ~~(e) Commencing January 1, 2013, and ending December 31, 2014,~~
34 ~~any company, which meets the criteria provided pursuant to the provisions~~
35 ~~of K.S.A. 2011 Supp. 74-50,211, and amendments thereto, that retains the~~
36 ~~employees of an existing business unit located in Kansas and enters into an~~
37 ~~agreement with the secretary pursuant to K.S.A. 2011 Supp. 74-50,213,~~
38 ~~and amendments thereto, shall be eligible to retain 95% of the qualified~~
39 ~~company's Kansas payroll withholding taxes for such employees for a~~
40 ~~period of up to five years.~~

41 ~~(f) (1) Commencing January 1, 2013, and ending December 31, 2014,~~
42 ~~pursuant to the provisions of subsection (e), the secretary of commerce, in~~
43 ~~the secretary's sole determination, may provide the benefits of the~~

1 promoting employment across Kansas act for situations where it is deemed
2 necessary by the secretary that the state of Kansas provide incentives for a
3 company or its operations currently located in Kansas to remain in Kansas
4 so as to keep its retained jobs. The secretary shall establish and verify that
5 a prospective company has competitive alternatives that it is seriously
6 considering and that a company's relocation may be imminent.
7 Furthermore, the secretary shall assess:

8 (A) ~~Whether the retention of the company or its operations is~~
9 ~~important to the economic vitality of the state;~~

10 (B) ~~the area where such company or operations is located; or~~

11 (C) ~~whether the retention of the company or its operations is~~
12 ~~important to a particular industry in the state due to any number of factors~~
13 ~~including, but not limited to, the quantity, quality or wages of the retained~~
14 ~~jobs involved.~~

15 (2) ~~Effective January 1, 2013, and ending December 31, 2014, the~~
16 ~~secretary may use the promoting employment across Kansas act in~~
17 ~~conjunction with other economic development programs to develop a~~
18 ~~retention package.~~

19 (g) The provisions of this act as in effect prior to the effective date of
20 this act shall apply to employers who have entered into agreements with
21 the secretary prior to July 1, 2011. The provisions of this act shall apply to
22 employers who enter into agreements with the secretary on and after July
23 1, 2011.

24 Sec. 3. K.S.A. 2011 Supp. 74-50,213 is hereby amended to read as
25 follows: 74-50,213. (a) Any qualified company meeting the requirements
26 of K.S.A. 2011 Supp. 74-50,212, and amendments thereto, may apply to
27 the secretary for benefits under this act. The application shall be submitted
28 on a form and in a manner prescribed by the secretary, and shall include:
29 (1) Evidence that the applicant is a qualified company; and (2) evidence
30 that the applicant meets the requirements of K.S.A. 2011 Supp. 74-50,212,
31 and amendments thereto.

32 (b) The secretary may either approve or disapprove the application.
33 Any qualified company whose application is approved shall be eligible to
34 receive benefits under this act as of the date such qualified company enters
35 into an agreement with the secretary in accordance with this section.

36 (c) Upon approval of an application for benefits under this act, the
37 secretary may enter into an agreement with the qualified company for
38 benefits under this act. If necessary, the secretary may also enter into an
39 agreement with any third party described in subsection (a) of K.S.A. 2011
40 Supp. 74-50,212, and amendments thereto, or such third party may be a
41 party to the agreement between the qualified company and the secretary.
42 The agreement shall commit the secretary to certify to the secretary of
43 revenue: (1) That the qualified company is eligible to receive benefits

1 under this act; (2) the number of new employees hired by the qualified
2 company; and (3) the amount of gross wages being paid to each new
3 employee.

4 (d) The agreement between the qualified company and the secretary
5 shall be entered into before any benefits may be provided under this act,
6 and shall specify that should the qualified company fail to comply with the
7 terms and conditions set forth in the agreement, or fails to comply with the
8 provisions set forth in this act, the secretary may terminate the agreement,
9 and the qualified company shall not be entitled to any further benefits
10 provided under this act and shall be required to remit to the state an
11 amount equal to the aggregate Kansas payroll withholding taxes retained
12 by the qualified company, or remitted to the qualified company by a third
13 party, pursuant to this act as of the date the agreement is terminated.

14 (e) A qualified company that is already receiving benefits pursuant to
15 this act may apply to the secretary for additional benefits if the qualified
16 company meets the requirements of K.S.A. 2011 Supp. 74-50,212, and
17 amendments thereto.

18 (f) A qualified company seeking benefits shall be allowed to
19 participate in the IMPACT program pursuant to K.S.A. 74-50,102 *et seq.*,
20 and amendments thereto, but shall not be allowed to participate in any
21 other program in which any portion of such qualified company's Kansas
22 payroll withholding taxes have been pledged to finance indebtedness or
23 transferred to or for the benefit of such company. A qualified company
24 shall not be allowed to claim any credits under K.S.A. 79-32,153, 79-
25 32,160a or 79-32,182b, and amendments thereto, if such credits would
26 otherwise be earned for the hiring of new employees and the qualified
27 company has retained any Kansas payroll withholding taxes from wages of
28 such employees. A qualified company shall not be eligible to receive
29 benefits under K.S.A. 2011 Supp. 74-50,212, and amendments thereto, and
30 under K.S.A. 74-50,102 *et seq.*, and amendments thereto, for the same new
31 employees.

32 (g) (†) Under no circumstances shall the total amount of benefits
33 authorized or granted to the aggregate of all expanding businesses, as such
34 term is defined in K.S.A. 2011 Supp. 74-50,211, and amendments thereto,
35 under this act exceed \$4,800,000 in the fiscal year commencing on July 1,
36 2011, and \$6,000,000 in any fiscal year commencing on or after July 1,
37 2012.

38 ~~(2) Under no circumstances shall the total amount of benefits~~
39 ~~authorized or granted to the aggregate of businesses under subsections (e)~~
40 ~~or (f) of K.S.A. 2011 Supp. 74-50,212, and amendments thereto, exceed~~
41 ~~\$1,200,000 in the fiscal year commencing on July 1, 2012, \$2,400,000 in~~
42 ~~the fiscal year commencing on July 1, 2013, and \$1,200,000 in the fiscal~~
43 ~~year commencing on July 1, 2014.~~

1 (h) The secretary shall adopt rules and regulations necessary to
2 implement and administer the provisions of this act.

3 Sec. 4. K.S.A. 2011 Supp. 74-50,211, 74-50,212 and 74-50,213 are
4 hereby repealed.

5 Sec. 5. This act shall take effect and be in force from and after its
6 publication in the statute book.